

Petros Coal Corporation and Blue Bird Coal Corporation and United Mine Workers of America.
Case 10-CA-12874

July 28, 1981

SUPPLEMENTAL DECISION AND ORDER

On November 21, 1978, the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding¹ in which it directed, *inter alia*, that Petros Coal Corporation, herein called Respondent Petros, its officers, agents, successors, and assigns, offer immediate and full reinstatement to certain employees and to make them whole for any loss of pay they may have suffered resulting from Petros' unfair labor practices against them, in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended. On August 8, 1979, the United States Court of Appeals for the Sixth Circuit issued its judgment enforcing in full the reinstatement and backpay provisions of the Board's Order. A controversy having arisen over the amounts of backpay due under the terms of the Order, the Regional Director for Region 10, on July 18, 1980, issued a backpay specification (hereinafter specification) and a notice of hearing setting forth allegations with respect to the amounts of backpay due. In this specification and notice of hearing the Regional Director also named Blue Bird Coal Corporation (hereinafter Blue Bird) as an alleged successor to Respondent Petros with knowledge of the unremedied unfair labor practices of Respondent Petros and with liability for the remedy of those unfair labor practices. Both Respondent Petros and Blue Bird were duly served with copies of the specification. Neither Respondent Petros nor Blue Bird filed an answer to the specification and its allegations, therefore, stand uncontroverted.

On January 12, 1981, counsel for the General Counsel filed directly with the Board a Motion to Transfer Proceeding to the Board and Motion for Summary Judgment.² Subsequently, on January 15, 1981, the Board issued an Order Transferring Proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted, which were served by certified mail on Respondent Petros and

Blue Bird.³ Neither Respondent Petros nor Blue Bird has filed a response to the Notice To Show Cause.

Upon the entire record in this proceeding the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.54(c) of the Board's Rules and Regulations, Series 8, as amended, provides in relevant part with respect to a backpay specification:

(c) *Effect of failure to answer or to plead specifically and in detail to the specification*—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. . . .

The backpay specification duly served on Respondent Petros and Blue Bird on July 18, 1980, by certified mail, specifically states that, pursuant to Section 102.54 of the Board's Rules and Regulations, Respondent Petros and/or Blue Bird shall file an answer with the Regional Director and to the extent that such answer fails to deny the allegations of the specification in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and Respondent Petros or Blue Bird shall be precluded from introducing any evidence controverting them. According to the uncontroverted allegation of the Motion for Summary Judgment, counsel for the General Counsel informed Respondent Petros and Blue Bird by letter dated August 14, 1980, of the requirement to file an answer to the specification and of the General Counsel's intention to move for summary judgment in the above-styled case if no answer was filed. The letter was sent to Respondent Petros and Blue Bird on the same date by certified mail. As of January 8, 1981, the date of the Motion for Summary Judgment, neither Respondent Petros nor Blue Bird has filed an answer to the specification, nor have they filed a response to the Notice To Show Cause.

Since neither Respondent Petros nor Blue Bird has filed an answer to the specification or offered any explanation for their failure to do so, in accordance with the rules set forth above, the Board

¹ 239 NLRB 410. The Respondent was inadvertently referred to as Petros Coal Company in the Board's Decision.

² Counsel for the General Counsel alleges in his motion that Respondent has not filed an answer. We construe this to include Blue Bird Coal Corporation because in the specification it was alleged to be the successor of Respondent Petros and the General Counsel's motion was served upon Blue Bird as a party to the instant proceeding.

³ A copy of the Order and Notice To Show Cause was sent by regular mail to the corporate address of Blue Bird and by certified mail to attorney Joseph H. Van Hook as the registered agent of Blue Bird for acceptance of service of process.

deems Respondent Petros and Blue Bird to have admitted all allegations of the specification to be true and that there are no matters in issue requiring a hearing. Accordingly, we grant the General Counsel's Motion for Summary Judgment. On the basis of the specification and the entire record in this case, the Board makes the following:

FINDINGS OF FACT

Blue Bird Coal Corporation, a Tennessee corporation, has since on or about October 1978 maintained an office and place of business located at Devonia, Tennessee, where it is engaged in the operation of the No. 2 underground coal mine, formerly operated by Petros Coal Corporation, the Respondent herein. In fact, Blue Bird has been engaged in the same business operations, at the same location, providing the same service to substantially the same customers, employing the same supervision as Respondent Petros, and has as a majority of its employees individuals who were previously employed by Respondent Petros. In addition, at the time Blue Bird took over these operations from Respondent Petros, Blue Bird had knowledge of the unremedied unfair labor practices of Respondent Petros in the subject case reported at 239 NLRB 410.

Accordingly, we find that Blue Bird has continued the same employing enterprise and has been, and is, a successor of Respondent Petros. We also find that Blue Bird, as successor to Respondent Petros, and with knowledge of the unremedied unfair labor practices of Respondent Petros, is liable for the remedy of those unfair labor practices.⁴

⁴ *Perma Vinyl Corporation, Dade Plastics Co. and United States Pipe and Foundry Company*, 164 NLRB 968 (1967), *enfd. sub nom. United States Pipe and Foundry Company v. N.L.R.B.*, 398 F.2d 544 (5th Cir. 1968).

We further find that Randall Bunch, Glen Bunch, Stanley Bunch, and Robert York are entitled to be made whole under the Board's Order and the court's decree by payment to them of the amounts as summarized and calculated in the General Counsel's backpay specification; namely, by payments of \$40,800 to Randall Bunch; \$40,680 to Glen Bunch; \$40,800 to Stanley Bunch, and \$40,800 to Robert York, plus interest accrued to the date of payment, minus the tax withholdings required by Federal and state laws.

Finally, we find that Respondent Petros and its successor, Blue Bird, are jointly and severally responsible for remedying the unfair labor practices of Respondent Petros and making the above-named employees whole in the amounts set forth above.⁵

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent Petros Coal Corporation and Blue Bird Coal Corporation, their officers, agents, successors, and assigns, shall jointly and severally make whole the discriminatees named below, by payment to them of the amounts following their names plus interest accrued to the date of payment to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977), less tax withholdings requiring by Federal and state laws. See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Randall Bunch	\$40,800
Glen Bunch	40,680
Stanley Bunch	40,800
Robert York	40,800

⁵ *Golden State Bottling Co., Inc. Pepsi-Cola Bottling Company of Sacramento v. N.L.R.B.*, 414 U.S. 168 (1973).